The defendant denies that (1) the plaintiff has suffered any damage to her house and (2) alternatively, as he was only using his land in a normal manner (i.e. building houses on it) and that excavation and piling operations were the usual and normal method of building adopted on that type of land, he should not be held liable for any damage that might have resulted from the excavation and vibrations of piling operations that were in no way excessive.

On considering the whole of the evidence, I have come to the following conclusions on the facts :—

(1) No. 14, Birch Road, Singapore, is owned by the plaintiff and was built in accordance with plans prepared by the local authorities and at the commencement of the defendant's building operations on the adjoining land was in a reasonable state of repair and not in a dilapidated condition.

(2) The side wall of No. 14, Birch Road, was properly "shored up" by the defendant before he commenced his excavation works.

(3) The excavation works carried out by the defendant were normal for the type of building erected in that vicinity.

(4) The piling operations were not excessive and were normal for buildings erected in the vicinity.

(5) No damage to No. 14, Birch Road, can be attributed to excavation works.

(6) The roof was damaged owing to the cross wall immediately below it cracking. This was caused by vibrations from the piling operations of the defendant.

(7) There were 4 cracks in the cross walls that were caused by vibrations from the piling operations of the defendant all of which had been repaired by the defendant and only needed smoothing over.

(8) The looseness of the floor boards on the first floor was not caused by vibrations of the piling operations of the defendant.

(9) The plaintiff has failed to prove any depreciation in the value of No. 14, Birch Road, due to the damage caused by the operations of the defendant, but in any event I find it would be negligible.

Mr. F. B. Oehlers, in support of the plaintiff's case, relied on the case of *Hoare & Co. v. McAlpine*[1] in which it was held by Astbury, J. that the doctrine of *Rylands v. Fletcher*[2] applied to damage caused by vibrations from piling operations and the defendant's Counsel, Mr. L. A. J. Smith, relied on *Wilkins v. Leighton*[3]; the facts of that case were that a house was built on adjoining land to the plaintiff's and the weight of the house, some years after its erection, caused a wall on the plaintiff's land to collapse and damage his property, and Luxmore, J. there held that (1) the doctrine of *Rylands v. Fletcher*[2] did not apply as the building of a house was the normal use of the defendant's land, and (2) if the action was founded on nuisance it also failed because the defendant did not know there was a nuisance and could not with reasonable care have known of the existence of a nuisance. Having considered the judgment of Luxmore, J., I do not think it can be applied to the facts of the present case. In this case I consider that vibrations of the piling operations by the defendant which caused damage to the plaintiff's house amounted to an actionable nuisance of which the defendant must have had knowledge and that the defendant is liable for such damage.

I arrive at the same conclusion as Astbury, J. in *Hoare & Co. v. McAlpine*[1] which was a case based on very similar facts, but I do not consider that the doctrine of *Rylands v. Fletcher*[2] applies to such a case and I agree with the comments of Sir Frederick Pollock in his notes on the judgment of Astbury, J. at page 505 in *Pollock on Torts*, 13th edition :—

"In **Hoare & Co. v. McAlpine**, Astbury, J. accepted a suggestion, not necessary to the decision, that the rule extends to vibration set up in the soil by pile-driving (with the consequence of all damage therefrom being recoverable whether it amounts the nuisance or not); but this seems a fallacious extension. A man cannot be said to bring or collect vibrations on his land, nor can they be said to escape; neither are they noxious or dangerous in their own nature. On principle the cause of action is nuisance or nothing, and no authority can be shown for inventing any other."

I assess the damage to the cross walls of the plaintiff's house, taking into consideration the repairs already done by the defendant, at $150 and the damage to the roof at $300 — the amount paid by the plaintiff for the repairs.

I have no doubt that but for the avaricious attitude adopted by the husband of the plaintiff, who had the management of her affairs, this case would not have been brought to this Court.

There will be judgment for the plaintiff in the sum of $450 and Costs on District Court Scale.

Order accordingly.

LOOK CHUN HENG & ANOR. v. ASIA INSURANCE CO., LTD.

[Orig. Civ. Juris. (Storr, J.) January 24, 1952]

[Singapore — Suit No. 107 of 1951]

Executors and Trustees — Companies Ordinance, ss. 67 and 102 — Transfer of shares.

The testator died in 1931 having named six persons as executors and trustees. The will was proved by four of such persons, leave being reserved to the remaining two. Double probate was made by one of these remaining two. One of the clauses of the will directed the trustees to stand possessed of all the testator's property, movable and immovable, upon certain trusts. The debts of the estate and all estate duties were settled by the end of 1936. In 1944 only two of the executors and trustees who had proved were in Singapore, the plaintiffs — also executors and trustees — being out of the Colony The deceased held certain shares in the defendants Company and they were still in his name in 1944 when the Singapore executors and trustees transferred them for value, the defendants Company duly registering the new holder. The plaintiffs claimed that as the administration of the estate was completed by the end of 1936

the residue of the estate including the shares were vested in all the trustees and therefore, the transfer of 1944 was null and void, not being the act of all the trustees then existing.

Held, that as the shares were in 1944 still in the name of the deceased the administration of the estate was not completed and any one of the several co-executors, for the purpose of the administration, could deal with their disposal.

The plaintiffs contended that as the probate and copy of the will had been served on the defendants Company, the latter had notice of the trustees set out in the will.

Held, that production of the grant of probate to a company merely gave notice of the names and addresses of the persons who had constituted themselves the legal personal representatives of the testator and the company was not affected with notice, express or otherwise, of the other contents of the will.

Cases referred to :—

(1) *Attenborough v. Solomon* (1913) A.C. 76.
(2) *Coggs v. Bernard* (1703) 2 Ld. Ray. 909.
(3) *Barton v. North Staffordshire Rly. Co.* 38 Ch. D. 458 — Kay, J. bottom p. 464.
(4) *Barton v. London & North Western Rly. Co.* 24 Q.B.D. 77 — Lord Esher, M.R. p. 82 *et seq.*
(5) *Grundy v. Briggs* (1910) 1 Ch. D. 444.
(6) *Simpson v. Molson's Bank* (1895) A.C. 270.
(7) *Mackereth v. Wigan Coal & Iron Co. Ltd.* (1916) 2 Ch. D. 293.
(8) *Societe Generale de Paris v. Tramways Union Co.* (1884) 14 Q.B.D. 424.
(9) *Societe Generale de Paris v. Walker* 11 App. Cas. 20.

SUIT.

F. R. N. H. Massey for the plaintiffs.

L. A. J. Smith for the defendants.

Cur. Adv. Vult.

Storr, J. : — One Look Yan Kit died on the 11th July, 1931, having executed his last will and testament on 30th December, 1926, by which he appointed (1) Leong Shu Foon (f), (2) Lew Seng Foon (f), (3) Look Chun Tock, (4) Look Chun Kwan, (5) Look Chun Heng (1st plaintiff), and (6) Look Chun Wai (2nd plaintiff) his executors and trustees and referred to them throughout his will as "my trustees".

Probate was granted by the High Court, Singapore, on 27th July, 1931, to the 2nd, 3rd, 4th, and 5th (1st plaintiff) executors and trustees, with leave reserved for the 1st and 6th executors and trustees to come in and prove. Double probate was granted by the High Court, Singapore, to the 6th executor and trustee on the 30th January, 1932. The 1st executor and trustee named by the testator has never proved the will or taken any steps in the administration of the estate.

By his will the testator, after giving directions to "my truestees" for the payment of his funeral expenses, debts and sundry legacies, in para 7 gave the following directions :—

"I DIRECT my Trustees as soon as may be deemed expedient after my death to sell call in and convert into money such part of my immoveable property as shall consist of rubber estates and to invest the net proceeds of such sale calling in and conversion and the residue of any ready money belonging to me at the date of my death which is not then invested in the purchase of house property in Singapore situated within a radius of five miles from the General Post Office Singapore the title to such property to be freehold Statutory Land Grant or nine hundred and ninety nine (999) years leasehold and subject thereto to stand possessed of all my property moveable as well as immoveable (hereinafter called my residuary estate) upon the trusts following that is to say my Trustees shall until the expiration of a period of twenty years from the date of my death (hereinafter called the date of distribution) manage and let my immoveable property at such rent or rents and subject to such conditions stipulations and reservations as they shall think fit and out of the income arising from my residuary estate after paying all necessary expenses thereout including assessments rates taxes repairs insurances and other charges or outgoings apply the residue thereof in payment of....."

then follow the payments to be made.

The debts due by the estate were paid within a year and all death duties were settled by the end of 1936.

In 1941 the 6th executor and trustee, Look Chun Wai (2nd plaintiff) went to Hong Kong and in 1942 the 5th executor and trustee, Look Chun Heng (1st plaintiff) went to India. Both returned to Singapore in 1946.

In October, 1943, the 3rd executor and trustee, Look Chun Tock, died. On the 3rd November, 1948, the 4th and on the 1st February, 1950, the 2nd executor and trustee executed deeds of retirement respectively, and since the 1st February, 1950, the plaintiffs have been the only active executors and trustees.

Amongst the investments forming part of the estate of the testator were 1,000 shares of $10 each, half paid up, numbered 14,001 to 15,000 in the Asia Insurance Company, Ltd. (the defendant Company). Double Probate was registered with the defendant Company on 22nd February, 1944 (2604). The shares remained in the name of the testator and there was no evidence that any of the executors and trustees ever attempted to have them transmitted or registered in their own names.

On the 11th March, 1944, the 2nd and 4th executors and trustees — the only surviving executors and trustees in Singapore at that time — made and executed a transfer of the 1,000 shares in the defendant Company to one Li Leong Ki for the sum of $5,000

Japanese money. The transfer was duly registered by the defendant Company which issued a fresh share certificate in the name of the purchaser and registered the purchaser as the owner thereof.

The plaintiffs submitted that (1) as the administration of the estate was completed by the end of 1936, all the residue of the estate including the shares in question were vested in all the trustees and therefore the transfer of the 11th March, 1944, executed by the 2nd and 4th executors and trustees is null and void and of no effect because it was not executed jointly by all the trustees or the executors of the testator's estate at that date as required by law and that the said transfer should not have been registered by the defendant Company, and (2) as the administration of the estate was completed and the transfers were executed by the 2nd and 4th executors and trustees as trustees the Company had notice of a trust and should not have registered the transfers.

They therefore claim :—

(1) A declaration that the transfer dated 11th March, 1944, made by Lew Seng Foon and Look Chun Kwan, the trustees, alternatively the executors, of the will of Look Yan Kit, deceased, to Li Leong Ki of 1,000 shares of $10 each, half paid, numbered 14001 to 15000 in the defendant Company, is null and void.

(2) That the defendant Company appropriate or purchase and register in the name of Look Yan Kit, or alternatively, in the names of the plaintiffs and Lew Seng Foon and Look Chun Kwan 1,000 shares of $10 each (half paid) or shares to the equivalent value in the defendant Company.

(3) Alternatively, damages for wrongful registration of the said transfer of 11th March, 1944.

(4) Costs.

(5) Such other relief as the case may require.

With regard to their 1st submission the plaintiffs relied on *Attenborough v. Solomon*[1], but that was a case of a pledge to a pawnbroker and quite different from the present case. In that case, Viscount Haldane, L.C. at p. 84 said :—

"But the contract of pawn is simply an illustration of that contract of bailment of which Holt, C.J. gave the famous exposition in the great case of Coggs v. Bernard[2]; and it rests upon this foundation, that the property remains in the bailor, and that the bailee, whether it be a bailment by way of pawn or in any other form, simply takes at the outside a right to the possession dependent on the validity of the title of the bailor with the other rights possibly superadded to which I have referred. If that be true, upon no hypothesis did the appellants get a legal title to the property in the plate. When A. A. Solomon handed over these articles of silver to Messrs. Attenborough he had no property to pass as executor; and they got no contractual rights which could prevail against the trustees."

and it was on that point that the case was really decided.

In the present case the only persons recognised by the defendant Company as having a title to the shares were the executors (vide article 29[a] of the defendant Company's Articles of Association and section 67[b] of the Companies Ordinance No. 49 of 1940) as there had been no transmission and the shares still remained in the name of the deceased. The question in the present case is not whether the 2 executors and trustees who executed the transfer were the beneficial owners of the shares but whether the defendant Company were right in accepting and registering the transfer executed by them.

Mr. Massey for the plaintiffs also referred to the cases of *Barton v. North Staffordshire Railway Co.*[3] and *Barton v. London & North Western Railway Co.*[4] in support of his argument, but in those cases the shares had been transferred from the name of the deceased into the names of the executors and trustees of his estate, and it was there held that, as the shares were registered in the names of both executors, one only of them could not make a valid transfer of such shares. It is not an authority for the proposition put forward by Mr. Massey that all executors or trustees must act in concert. There is ample authority to show that co-executors however numerous are regarded in law as individual persons and that the acts of any one of them alone for the purposes of administration are deemed to be the acts of all for they have all a joint and entire authority over the whole of any moveable property.

The question then arises as to whether the administration of the estate as far as these shares were concerned, which were still standing in the name of the deceased, was completed. I think it was not, for although from the facts it could be implied that the executors and trustees had assented to the gift of the shares to themselves on the terms of the trust mentioned in clause 7 of the will, they had not as between themselves and the defendant Company perfected their title and collected the shares into the trust property but had allowed the shares to remain in the name of the deceased which, by virtue of article 29 of the defendant Company's Articles of Association, left the executors of the deceased the only persons to be recognised by the Company as having any title in the shares and as such the only persons who could give a valid transfer.

With regard to the 2nd submission of the plaintiffs that the defendant Company had notice of the trusts

(a) "29. The executors or administrators of a deceased member (not being one of several joint holders) shall be the only persons recognised by the Company as having any title to the shares registered in the name of such member."

(b) "67. A transfer of the share or other interests of a deceased member of a Company made by his personal representative shall, although the personal representative is not himself a member of the company, be as valid as if he had been such a member at the time of the execution of the instrument of transfer."

set out in clause 7 of the will because (1) the probate and copy of the will were served upon them and that gave them notice of the contents of the will, and (2) the 2nd and 4th executors and trustees who when executing the transfer signed as trustees and not as executors.

With regard to (1) the matter is dealt with by Eve, J. in the judgment in *Grundy v. Briggs*[5], where at p. 449 he says :—

"In my opinion it would be a most dangerous thing to hold that a company, to whom the probate is produced for the purpose of establishing who are the legal personal representatives of the deceased shareholder, are thereby affected with notice, express or otherwise, of the other contents of the testator's will. I think, therefore, that the notice which the company had from the probate was limited to a notice of the names and addresses of the persons who had constituted themselves the legal personal representatives of the testator."

And in *Simpson v. Molson's Bank*[6] Lord Shand at p. 281 says :—

"The production of the will or probate at that time would be in accordance with the usual practice, which entitles the bank to require evidence by production of the title in virtue of which the entry of any transfer of shares in the bank's books is asked. But the only question with which the bank were concerned was that of legal title. They had to satisfy themselves only that the will gave a right to the shares which entitled the executors to be registered as owners. They were not called upon, on an application to enter a transfer by transmission of the bank's shares, to examine the will with reference to an entirely different matter which did not concern them, namely, the testator's directions as to the ultimate destination and disposal of his estate; and there is no reason to suppose that anything more was done on this occasion than is usual in such cases."

And with regard to (2), in *Mackereth v. Wigan Coal and Iron Co. Ltd.*[7] at p. 301 Peterson, J. says :—

"In several cases it has been stated in broad terms that a company 'need not take notice in any way of trusts': per Brett, M.R. in **Societe Generale de Paris v. Tramways Union Company**[8]; or that any notice is absolutely imperative to affect a company with any notice: per Lord Selborne in the same case in the House of Lord — **Societe Generale de Paris v. Walker**[9]. These observations had, however, reference to the obligation of the company to register transfers of shares."

Section 102 of the Companies Ordinance No. 49 of 1940 states :—

"No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the Registrar."

I have therefore come to the conclusion that the defendant Company were right in registering the transfer which was properly executed according to the Articles of Association of the defendant Company and I can find no evidence from which I can hold that the Company had notice of any trust relating to the shares in question.

The plaintiffs' claim is therefore dismissed with costs.

Claim dismissed.

N. P. SINNASAMY v. HUP AIK OMNIBUS CO.

[Court of Appeal (Pretheroe, Ag. C.J., Thomson and Briggs, JJ.) February 2, 1952]

[F.M. — Civil Appeal No. 34 of 1951]

Company — Registration of shareholder — Illegal reduction of capital — Dividends.

Where a declaration is made that a claimant is entitled to be registered as the owner of shares in a company it is not permissible to order that the company either register the claimant or refund to him the value of the shares; the latter course would have involved the company in an illegal reduction of capital. On registration the claimant would be entitled to draw dividends declared and payable after the date of purchase.

COURT OF APPEAL.

M. Edgar and *M. S. Mahendran* for the appellant.

H. T. Ong for the respondent.

The facts appear sufficiently from the judgment of Briggs, J.

Cur. Adv. Vult.

Briggs, J. : — In this case the plaintiff prayed as against one Ramiah a declaration that he had bought from one Rayan deceased, whose administrator Ramiah was, 200 shares in the respondent Company. The Court found in the plaintiff's favour and duly made the declaration, against which there is no appeal. The plaintiff also sought as against the respondent Company an order that he be registered as owner of the said 200 shares. On this part of the claim the Court made an order in the following terms :—

"AND THIS COURT DOTH FURTHER ORDER that the second defendant Company do either register the said 200 shares in the name of the plaintiff or refund to the plaintiff the sum of $200 and that in the event of the second defendant Company refunding the plaintiff the said sum of $200 the first defendant do refund the plaintiff a further sum of $200."

The second course, of the two which the Company was thus in terms permitted to adopt, was in practice impossible, in that it would have involved the Company in an illegal reduction of capital and the consequences, including commission of penal offences, which would have flowed therefrom. The plaintiff appealed and asked that the Company be ordered to place him on the register. The Company did not at first cross-appeal; but when it was pointed out by the Court that the permission to refund the nominal value of the shares in cash was merely illusory and that in fact, under the Order made, it would be obliged to register the plaintiff, its Counsel applied for leave to cross-appeal out of time. Such a cross-appeal would have raised issues of fact which were never dealt with in the Court below, and we refused leave. The Company is